

JAN 11 1993

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

ORIGINAL

In the Matter of )

Implementation of Section 8 of  
The Cable Television Consumer  
Protection and Competition Act  
of 1992 )

MM Docket No. 92-263

Consumer Protection and  
Customer Service

**COMMENTS OF**  
**CONSORTIUM OF SMALL CABLE SYSTEM OPERATORS**

The Consortium of Small Cable System Operators (the "Consortium"), by counsel and pursuant to Section 1.415(a) of the Commission's Rules and Notice of Proposed Rule Making, MM Docket No. 92-263, FCC 92-541, released December 11, 1992, hereby submits its Comments with respect to the Commission's adoption of standards governing cable customer service.<sup>1</sup> The Consortium's members are independent cable companies serving less populated, primarily rural areas. In general, the sparse population, higher operating costs and limited profit potential characteristic of these systems greatly intensifies the burdens associated with increased regulation. In light of these inherent limitations, it would be unreasonable and unjust to subject small system operators to the same minimum federal standards imposed on large cable MSO's. When adopting customer service standards, the Commission must recognize

<sup>1</sup> Attached hereto as Exhibit 1 is a list of the Consortium's members.

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the unique needs of small cable operators, and afford local franchise authorities the flexibility to tailor customer service standards to the specific needs of the community, taking into account the past service record and the limited resources of the small system operator.

### Discussion

#### **I. FRANCHISE AUTHORITIES SHOULD HAVE DISCRETION TO FLEXIBLY IMPLEMENT CUSTOMER SERVICE STANDARDS.**

Section 8 of the Cable Television Consumer Protection and Competition Act of 1992 (the "Cable Act")<sup>2</sup> requires the Commission to adopt customer service standards, but does not establish a specific mechanism for applying such standards at the local level. The Consortium believes that Congress intended that the federal standards apply locally only if specifically adopted by local franchise authorities, and that franchise authorities retain the discretion to adopt different, even lesser standards, at least in the case of small system operations.

In adopting Section 8, Congress expressly recognized the need to have customer service standards correspond to the particular characteristics of local communities. In the House Report adopted by the Conference Committee,<sup>3</sup> Congress noted "the difficulty of

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<sup>2</sup> Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102-385, 102 Stat. (1992).

<sup>3</sup> House Committee on Energy and Commerce, H.R. Rep. No. 628, 102d Cong. 2d Sess. (1992) ("House Report"). Without comment, the conferees adopted the House customer service provisions. See House Committee on Commerce and Energy, H.R. Rep. 862, 102d Cong., 2d Sess. (1992) at 79, reprinted at Cong. Rec. H 8308 (Sept. 14, 1992).

establishing a uniform set of national standards that can be applied equally to all cable systems, regardless of size, and in all parts of the country, regardless of marketplace characteristics." House Report at 105. Congress directed the Commission to adopt standards that "should be flexible in nature and should allow a local franchising authority to tailor the requirements to meet the needs of the local cable community." *Id.* (Emphasis supplied.) See also Senate Committee on Commerce, Science, and Transportation, S. Rep. No. 92, 102d Cong., 1st Session (1991) at 21. Clearly, Congress did not intend that the FCC unilaterally impose general federal standards on all cable systems. Consistent with Congress' mandate, the FCC's standards should be applied at the local level only if the franchising authority acts affirmatively to adopt them. Even then, franchise authorities should have the discretion to tailor the federal standards to the specific needs of the community, and to adopt less restrictive standards if the circumstances (including the operational and financial limitations faced by the small system operator) dictate.

The costs of operating a small cable system are significantly higher on a per subscriber basis than the costs to operate larger urban systems. Small system operators are not able to take advantage of the volume discounts for equipment and program purchases typically offered MSO's. In addition, because they serve areas with fewer homes per mile, small systems typically face substantially higher cable hardware and pole attachment costs. The resultant lack of significant cash flow makes financing equipment

and system upgrades much more difficult and more costly. In light of these limitations, many small cable systems simply cannot afford to maintain a fleet of service vehicles capable of responding to all outages within a set period of time, a particular problem for small system operators with expansive operations. Likewise, many small systems do not have the personnel to answer telephone inquiries within federally mandated time periods, nor the current resources to hire additional employees.

Consistent with Congressional intent, local franchise authorities, working with the cable operator, must retain the flexibility to adopt standards that are less restrictive than federal standards in order to accommodate the financial, operational, equipment and other limitations of small system operators, as well as the specific needs of the community. Without this discretion, small cable systems will face severe financial hardship in complying with intrusive regulations. The ultimate effect could be an unintended restructuring of the industry, as small cable systems are forced to sell their operations to MSO's in the face of overly complex, prohibitively expensive regulatory burdens.

The only practical alternatives would be for the FCC to adopt lesser standards for small systems or to create a specific exemption for small systems. In this regard, the term "small cable system" is not defined in the Cable Act or existing Commission rules. The Consortium believes that, for purposes of customer services rules, a "small cable system" should be defined as an

independently-owned system which has either: (a) no more than 10,000 subscribers (the number used in the NCTA's voluntary standards); or (b) annual gross revenues of \$7.5 million or less (the definition employed by the Small Business Administration). As for the specific standards to be adopted by the FCC, the Consortium believes the NCTA's voluntary standards satisfy the concerns of Congress and provide an appropriate framework for the cable industry. However, small cable systems must not be required to comply with standards that would impose upon them an unreasonable financial burden.

## **II. CUSTOMER SERVICE STANDARDS SHOULD BE IMPOSED AT FRANCHISE GRANT OR FRANCHISE RENEWAL.**

Regardless of the specific standards or range of standards to be adopted by the FCC, new local customer service requirements should be imposed only upon renewal of the franchise or upon the award of the initial franchise, and existing franchise agreements should be grandfathered.<sup>4</sup> To require modification of an existing franchise agreement would unnecessarily disrupt the relationship between the cable operator and local franchise authority by forcing a unilateral, post hoc renegotiation of the agreement prior to franchise renewal. As a practical matter, many small systems with limited personnel cannot afford to divert any time or resources toward the negotiation and implementation of added or modified

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<sup>4</sup> The Cable Act and the House Report are silent on the grandfathering issue. There is nothing in the legislative history to suggest that this silence should be construed as a bias against such grandfathering.

customer service requirements. In many instances, new standards could require substantial capital investment to institute, a burden that small cable operators obviously have not budgeted for, and which their current rates are not set to recoup. Indeed, small cable system operators may not be able to meet the financial burdens that pre-renewal imposition of customer service standards would impose unless they were to increase rates, a result clearly not intended by Congress.<sup>5</sup>

At the time new customer service standards are implemented, it may not be possible for small cable systems to immediately comply with the new standards. Small systems may not be financially able to upgrade systems, add personnel or purchase equipment at one time. Consequently, cable operators must be given a reasonable time period to comply with the new customer service standards. In some circumstances, a graduated phase-in may be necessary in order to defer capital expenses and thus minimize the financial burden on the small system operator.

Other elements of customer service standards, such as establishing office hours, provisions for measuring compliance and standards for refunds, also should be left to negotiation between the cable operator and franchise authority as part of the franchise negotiation process. Negotiating all of the customer service

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<sup>5</sup> It should also be noted that, with certain exceptions, cable operators already are required to upgrade technology and equipment pursuant to Section 3(b)(8) of the Cable Act. Creating an additional financial requirement, especially for small cable operators, imposes insurmountable burdens.

standards at one time will substantially reduce the financial and administrative burdens on small cable operators and allow them to properly budget for additional costs related to complying with customer service requirements.

### **Conclusion**

Consistent with Congressional intent, federal customer service standards should be flexibly drawn so that local franchise authorities may implement standards according to the unique needs of small systems and the local community. Small cable systems should not be taxed with costly and pervasive standards that would threaten their very existence. Rules that manifest recognition of this situation by permitting franchise authorities to apply standards flexibly, or exempt small systems outright, thus would serve the interests of small cable operators and the public.

Respectfully submitted,

**THE CONSORTIUM OF SMALL CABLE  
SYSTEM OPERATORS**

Date: January 11, 1993

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**EXHIBIT 1**

Atwood Cable Systems, Inc.

Belhaven Cable TV, Inc.

Clear Vu Cable

Fairmont Cable TV

Horizon Cable TV, Inc.

Panora Cooperative Cablevision

Pioneer Cable, Inc.

Rural Missouri Cable TV, Inc.

Southwest Missouri Cable TV, Inc.

Western Cabled Systems



**CERTIFICATE OF SERVICE**

I, Elizabeth Sobo, a secretary in the law office of Rini & Coran, P.C., hereby certify that I have on this 11th day of January, 1993, sent via hand delivery, a copy of the foregoing Comments to the following:

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